

S.B.CIVIL WRIT PETITION NO.6448/2006
Ishwar Jat Vs. State of Rajasthan & Ors.

DATE OF ORDER :: 25.7.2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. P.P. Choudhary, for the petitioner.
Mr. Rameshwar Dave, Dy. Govt. Advocate.
Mr. Shankar Chouhan } for the respondents.
Mr. D.K. Parihar }

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This petition for writ is directed to challenge validity propriety and correctness of the order dated 1.5.2006 passed by the Sub Divisional Officer, Gulabpura and the order dated 4.10.2006 passed by the Revenue Appellate Authority, Bhilwara. In brief the facts of the case are that the respondent Shri Devasthan Thikana Badnaur filed a suit against the petitioner under Section 183 of the Rajasthan Tenancy Act, 1955 (hereinafter to be referred to as, 'the Act of 1955') alongwith an application under Section 212 of the Act of 1955, seeking a temporary injunction and the Sub Divisional Officer cum Assistant Collector, Gulabpura by the order dated 1.5.2006 while accepting the application aforesaid appointed Tehsildar- Hurda as Receiver for the land in dispute. An appeal preferred by the petitioner under Section 225 of the Act of 1955 also came to be rejected by the Revenue Appellate Authority under an order dated 4.10.2006. Hence, this petition for writ is preferred.

The contention of learned counsel for the petitioner while giving challenge to the orders impugned is that the petitioner is having possession over the land and also Khatedari in his favour since times of Mewar Settlement, and therefore, he cannot be treated as a trespasser. The main emphasis of learned counsel for the petitioner is that whatever issue there can be that has to be decided under Section 183 of the Act of 1955 but there was no occasion to appoint receiver on the land in dispute where the petitioner is having a peaceful possession. According to learned counsel for the petitioner under Section 212 of the Act of 1955 a receiver can be appointed, if, the suit property have any threat to be damaged, alienated or otherwise disposed of. In the instant matter no such situation is available, therefore, there was no occasion for appointing any receiver. It is asserted that the trial court could have imposed certain other conditions or could have granted a temporary injunction restraining the petitioner from disposing of or alienating the land in question.

In reply to the writ petition the stand of the respondents is that the land in question is of deity, and therefore, the petitioner is a trespasser. The petitioner according to the respondents is having no right to retain the land in question with him. Beside the above it is also contended by learned counsel for the petitioner that the petitioner is having an alternative remedy before the Board of Revenue by way of

filing a revision petition to assail validity and propriety of the order passed by the Revenue Appellate Authority .

Heard counsel for the parties.

Section 212 of the Act of 1955 relates to the provisions for appointment of receiver. According to that, if in the course of any suit or proceedings under the Tenancy Act (i) if it is proved by affidavit or otherwise that any property to which suit or proceeding relates is in danger of being wasted, damaged or alienated or by any party thereto or (ii) that any party to such suit or proceedings threatens or intends to remove or dispose of the said property to defeat the ends of justice the court may grant a temporary injunction and if necessary may order for appointment of a receiver.

In the instant matter in entire application under Section 212 of the Act of 1955 no allegation is made by the respondents that any eventuality as provided under Section 212 exists warranting appointment of receiver and there is nothing to prove the eventualities as given in Clauses (a) and (b) of sub-section (1) of Section 212. No affidavit in the terms of Section 212 is also filed. The only averment made in the application is as follows:-

“यह कि उक्त विवादित आराजी देव स्थान की है और विपक्षीगण इस पर नाजायज तोर अतिक्रमी की हैसियत से काबिज है जिनकी बेदखली बाबत प्रार्थी की ओर से अलग से वाद पत्र प्रस्तुत किया गया है मगर उसकी तकमिल व तहकीकात में समय लगेगा इसलिए मूल वाद के निस्तारण तक उक्त आराजियात पर अविलम्ब रिसीवर कायम किया जाना आवश्यक होकर न्याय हित में है वरना प्रार्थी को ऐसी असहनीय क्षति का सामना करना पड़ेगा जिसकी क्षतिपूर्ति असंभव है।”

To substantiate the contents above an affidavit is also filed but that is not in terms of Section 212. The appointment of receiver, therefore, by the order impugned is absolutely illegal.

So far as the question of availability of alternative remedy is concerned I am not inclined to throw this writ petition on that account as on basis material available on record it is established that the receiver was appointed by the orders impugned in violation of the provisions of Section 212 of the Act of 1955. The relegation of the petitioner to avail alternative remedy in these circumstances shall be nothing but to create plurality of litigation.

For the reasons above this petition for writ succeeds, and therefore, the same is allowed. The orders dated 1.5.2006 and 4.10.2006 are quashed. The application under Section 212 of the Act of 1955 is remanded to the Assistant Collector, Gulabpura for its fresh

adjudication in accordance with law. Till disposal of the application aforesaid the petitioner shall not damage, waste or alienate the land in question in any manner. No order as to cost.

(GOVIND MATHUR), J .

jgoyal